Changes to the 2011 Compliance Manual

These are the major changes, updates, and additions to the 2011 Compliance Manual. The new information is shown here in red, **bold**, *italic*, and underlined font. However, the changes will not be formatted differently in the actual text of the manual.

Note that the changes identified here only represent those areas where there were major changes in policies or where new examples and clarifications have been added. Minor alterations such as formatting, corrected grammatical errors, and small changes in wording have not been identified in this section.

SECTION 2

Section 2- Part 2.2 D

Added the following clarification on electronic record-keeping:

Per the guidance issued by the IRS in Rev. Proc. 97-22 and Rev. Rul. 2004-83, IHCDA permits the electronic storage of records in lieu of hardcopies. However, hardcopy files should be maintained for all existing current households. The files for households that have vacated the property may be converted into electronic format once a new household moves into the unit.

Section 2- Part 2.2 J

Added the following clarification on online tenant event reporting:

Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD.

Section 2- Part 2.4

Added the following clarification on due diligence:

IHCDA would add that due diligence includes keeping up-to-date with IHCDA policies by reading the amended Compliance Manual each year, following IHCDA updates via MFD Notices, and attending IHCDA sponsored tax credit trainings. These are all examples of voluntary efforts that owners and management agents can make in order to remain in compliance.

SECTION 3

Section 3- Part 3.1

Added Section "F. Claiming Credits for Acquisition and Rehabilitation Projects"

F. Claiming Credits for Acquisition and Rehabilitation Projects

A project awarded tax credits for the acquisition and rehabilitation of an existing building(s) will receive two sets of credits, one for the acquisition and one for the rehabilitation, and will therefore have two Form 8609s for each building. Neither set of credits can be claimed prior to the date of acquisition nor prior to the year in which the rehabilitation expenditure requirements are completed.

1. *If Acquisition and Rehabilitation Occur in the Same Year*

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (defined as pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition using the current income limits, or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the tenant has already been living in the unit. This allows the credit flow to begin on the date of acquisition, assuming rehabilitation is completed within the same year. If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Section 4, Part 4.5 A.

Ex.1-Claiming credits when acquisition and rehabilitation are completed in the same year:

A building is acquired on February 1, 2010 and rehabilitation is completed on October 1, 2010. The owner may begin claiming credits back to February 1 (date of acquisition) for those units that were qualified.

Ex.2-The 240-day window:

A building is acquired on July 1, 2010. In-place households may be qualified anytime from March 3, 2010 (120 days prior to the date of acquisition) through October 28, 2010 (120 days after the date of acquisition). Any certifications completed during this time will be dated effective as of July 1, 2010 (the date of acquisition). Any existing households that are not certified until after October 28, 2010 will be initially qualified with an effective date of the actual date that the certification was completed.

2. *If Acquisition and Rehabilitation Occur in Different Years / "The Test"*

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition, or at any time up to 120 days after the date of acquisition. In either scenario, the

effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the tenant has already been living in the unit. If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Section 4, Part 4.5 A.

However, when rehabilitation is not completed until the year after the date of acquisition, the owner cannot begin claiming credits on the date of acquisition, but instead must wait until the beginning of the year in which the rehab is completed.

Example-Claiming credits when acquisition and rehabilitation are completed in different years:

A building is acquired on October 1, 2010 and rehabilitation is completed on April 1, 2011. The owner may begin claiming credits on January 1st, 2011 (the beginning of the year in which rehabilitation was completed) for those units that were qualified.

Rev. Proc. 2003-82 states that a unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period, so long as (1) the household was income qualified at the time the owner acquired the building or the date on which the household started occupying the unit, whichever is later, and (2) the unit remains rent-restricted. Therefore, at the beginning of the first year of the credit period, the incomes of the households that were initially certified in the previous year must be tested to determine if any units trigger the Next Available Unit Rule. However, if the effective date of the initial certification is 120 days or less prior to the beginning of the credit year, then the "test" does not have to be performed.

For those units that must be tested, the "test" consists simply of confirming with the household that the sources and amounts of anticipated income listed on the initial Tenant Income Certification form are still current. If additional sources of income are identified, the TIC must be updated based on the household's self-certification (it is not necessary to complete third-party verifications for purposes of conducting the "test"). Any households that exceed the 140% limit at the time of the "test" will invoke the Next Available Unit Rule.

Example 1- "Test" needed:

A building is acquired on July 1, 2010 and rehabilitation is completed on March 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. As of January 1, 2011 (the beginning of the first year of the credit period) the owner must "test" the income of all households that were certified with an effective date more than 120 days prior to January 1, 2011 (this includes all of the in-place households that were certified effective as of July 1, 2010).

Example 2- "Test" not needed:

A building is acquired on November 1, 2010 and rehabilitation is completed on June 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is November 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. In this scenario, the owner will not have to perform the "test," because all certifications had an effective date within 120 days prior to January 1, 2011 (the beginning of the first year of the credit period).

3. Relocating Households during Rehabilitation

An in-place household may have to be relocated from its unit, either temporarily or permanently, in order for the unit to be properly rehabbed. Credits cannot be claimed while a unit is uninhabitable. However, if a household is temporarily moved and then returned to the unit within the same calendar month, credits are not interrupted.

Example 1- Temporarily relocated but back within same calendar month:

Household is temporarily relocated on April 4th. Rehabilitation is completed and the household is returned to the unit on April 26th. The owner is eligible to claim credits for the month of April.

Example 2- Temporarily relocated but back in a different calendar month:

Household is temporarily relocated on August 15th. Rehabilitation is completed and the household is returned to the unit on September 5th. The owner may not claim credits on the unit for the month of August but may claim credits for September.

If a household permanently relocates to an empty (never qualified) unit, the credits stop on the original unit and begin in the new unit. If a household permanently relocates to a unit that has already been initially qualified, then the units swap status.

Example 3- Permanent relocation to an empty unit:

Household permanently relocates from Unit 1 to the empty (never qualified) Unit 12. The credits on Unit 1 stop and the owner cannot continue claiming credits on the unit until a new qualified move-in occurs. The owner may begin claiming credits on Unit 12.

Example 4- Permanent relocation to a previously qualified unit:

Household permanently relocates from Unit 1 to the previously qualified but now vacant Unit 4. The credits continue on both Units 1 and 4 (as per the Vacant Unit Rule). The units swap status, meaning Unit 1 is now treated as a vacant RHTC unit.

4. Removing Unqualified In-place Households

It is possible that some in-place households will not be able to qualify as tax credit households, either due to income or student status ineligibility. In a conventional apartment community, the owner can terminate leases at the end of the lease term. However, if the tax credits are being layered over an existing Section 8 or RD property, the households cannot be terminated due to ineligibility for the tax credit program. Any Section 8 or RD families that are over the tax credit income limits, ineligible under tax credit student status regulations, or are paying over the tax credit rent limit cannot be certified as RHTC households, but cannot be evicted or terminated. The owner may not claim credits on those units until the households become eligible or vacate. Therefore, it may be in the owner's interest to try and negotiate a mutual agreement with the household to encourage them to voluntarily vacate the unit. This could include paying the household's moving expenses, offering other monetary incentives, etc.

If an existing tax credit development receives an additional set of credits for rehabilitation, or if an existing tax credit development is purchased by a new owner who receives a set of acquisition and rehabilitation credits, the in-place tax credit households are grandfathered into the new allocation and considered qualified households. Households exceeding the 140% limit are considered qualified, but the Next Available Unit Rule will be in effect. See Section 4, Parts 4.5 C & D for more information.

Section 3, Part 3.2 A

Added the following clarifications on the Minimum Set-Aside Election:

NOTE: If the 20/50 Election has been made, no units in that project may be set-aside at the 60% rent or income level.

And

Therefore, if each building is its own project, then the Minimum Set-Aside must be met at each building (See Part 3.2 C below).

Section 3, Part 3.2

Added Section "C: 8609 Part II Line 8b: Multiple Building Projects"

C. 8609 Part II Line 8b: Multiple Building Projects

Part II of the Form 8609 is completed by the owner with respect to the first year of the credit period. Under Part II Line 8b, the owner must answer the question "Are you treating this building as part of a multiple building project for purposes of Section 42?" If the owner elects "yes," then the building is part of a multiple building project along with the other buildings in the development. If the owner elects "no," then each building in the development is considered its own project. This election has important compliance implications that affect the project for

the duration of the compliance period. All developments that are approved for IHCDA's Extended Use Policy will be treated as multiple building projects for compliance purposes, even if the 8609s reflect that the buildings are not part of a multiple building project.

The Minimum Set-Aside election must be met on a project basis. Therefore, if the owner has elected "yes" on Line 8b, then the building is part of a multiple building project and the Minimum Set-Aside must be met across the entire project. If the owner has elected "no" on Line 8b, then the building is considered its own project and the Minimum Set-Aside must be met within each building.

The Line 8b election also affects unit transfer rules. If the owner has elected "yes" to the multiple building project, then tenants may transfer between buildings without having to recertify for the program, as long as the household is not above the 140% limit. If the owner has elected "no" to the multiple building project, then tenants may not transfer between buildings. If a household wants to move to another building they must be treated as a new move-in and re-qualified for the program based on current circumstances. For more information on unit transfer rules, see Part 3.5D.

Because the election made on Part II Line 8b of the Form 8609 is so important for ongoing compliance, it is crucial that the owner and management agents have copies of the 8609s for each building and understand the elections that have been made.

Section 3, Part 3.2 D

Added the following clarification:

The owner must implement the new rent and income limits within forty-five (45) days of the effective date of the limits.

Section 3, Part 3.3

Added Section "B: HERA Limits and Gross Rent Floors"

B. HERA Limits and Gross Rent Floors

The U.S. Department of Housing and Urban Development (HUD) publishes Area Median Income (AMI) information for each county in Indiana on an annual basis. Upon receipt of this information, IHCDA will post the new annual income limits and corresponding rent limits on its website. This information is provided by IHCDA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCDA, to verify its accuracy. The owner must implement the new rent and income limits within 45 days of the effective date of the new limits.

In 2009, HUD began publishing "HERA Special" rent limits for Section 42 properties. (Note: "HERA" refers to the Housing and Economic Recovery Act of 2008). Where applicable, the HERA limits must be used by all tax credit projects that placed-in-service on or before December

31, 2008. However, not all counties in Indiana have HERA Special limits. Projects that placed-in-service in 2009 or later are not eligible to use the HERA Special limits.

Every tax credit development has a "gross rent floor," defined as the lowest rent limits that will ever be in place for that particular development. If the current year's HUD published limits drop below the gross rent floor, a project may continue to use the rent limits established within the gross rent floor. It is important to note that there is no floor for income limits.

For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date (as elected by the owner). For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date (as elected by the owner).

Therefore, when determining the rent limits for a project, the owner should compare the current county limit (or HERA limit if applicable) to the project's gross rent floor, and use the higher of the two. Because gross rent floors will differ from project to project, it is possible that two developments within the same county, or even two different phases of a development, will have different rent limits for the year.

Section 3, Part 3.3 C

Added the following note on HUD Form 50059 for project-based Section 8:

For tenants residing in units with project-based Section 8, the current 50059 showing the amount of rental assistance must be included in the file.

Section 3, Part 3.3. D

Added the following paragraph:

The 8823 Guide makes it clear that refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late fees and fees for prematurely breaking a lease, as long as the fees are clearly defined within the lease) are allowable fees that are not included in the gross rent computation.

Deleted the following paragraph:

~~***Accordingly, redecorating fees, recertification fees, and any other type of fees (regardless of name or characterization) that are charged to the tenant for services required as a condition of occupancy, may be charged, but must be included in the calculation of gross rent.***~~

Added the following items

3. Application Processing Fees

Application fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by management. No amount may be charged in excess of the average expected out-of-pocket cost of processing an application.

4. Mandatory Renter's Insurance

If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation. In this scenario, the owner must obtain an estimate similar to creating a utility allowance, in which the average rates are compared for all of the primary insurance providers in the area. The monthly renter's insurance allowance estimate must be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent.

IHCDA strongly recommends that owners do not mandate renter's insurance. Rather, owners should include clear language in the lease explaining that the property is not responsible for damage to the household's belongings and recommending that tenants seek out renter's insurance as they see fit.

5. Month-to-month Fees

Although month-to-month fees may seem optional (i.e. the tenant could choose to renew the lease for another year), the 8823 Guide clarifies that month-to-month fees are considered non-optional fees and are included in gross rent computation. Page 11-2 states:
"Required costs or fees, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and renter's insurance."

6. Prohibited Fees

The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

a. Fees for work involved in completing the Tenant Income Certification and other program specific documentation.
b. Fees for preparing a unit for occupancy. The owner is responsible for maintaining all tax credit units in a manner suitable for occupancy at all times. If a tenant is to be charged decorating, cleaning, or repair fees, the owner must document the file with photos of the damage to prove that the unit is in condition beyond normal expected wear and tear. Charges cannot exceed the amount actually spent on repair. IHCDA will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts for the repair work.
c. Fees for the use of facilities and amenities included in Eligible Basis. For example, an owner may not charge a tenant for the use of a clubhouse, swimming pool, parking areas, etc. if those items are included in Eligible Basis. Additionally, tenants may not be charged a deposit for the use of common areas included in Eligible Basis. However, if the facilities

are damaged, the responsible tenant(s) may be charged fees in accordance with Item 6-b above.

Section 3, Part 3.4

Added Section "B: Sub-metering"

B. Sub-metering

Some buildings in qualified low-income housing developments are sub-metered. Sub-metering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

Per IRS Notice 2009-44, utility costs paid by a tenant to the owner/development based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant for purposes of the RHTC utility allowance regulations. The notice states:

> ***For purposes of § 1.42-10(a) of the utility allowance regulations, utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. For RHS-assisted buildings under § 1.42-10(b)(1),buildings with RHS tenant assistance under § 1.42-10(b)(2), HUD-regulated buildings under § 1.42-10(b)(3), and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance under § 1.42-10(b)(4)(i), the applicable RHS or HUD rules apply. For all other tenants in rent-restricted units in other buildings under § 1.42-10(b)(4)(ii):***
>
> ***(1) The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);***
>
> ***(2) If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under § 42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise; and***
>
> ***(3) If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.***
>
> ***The utility allowance regulations will be amended to incorporate the guidance set forth in this notice.***
>
> ***EFFECTIVE DATE***

This notice is effective for utility allowances subject to the effective date in § 1.42-12(a)(4). Consistent with § 1.42-12(a)(4), building owners (or their agents) may rely on this notice for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

Section 3, Part 3.4 C 5

Added the following clarification:

For new construction developments or renovated buildings with less than twelve (12) months of consumption data available, IHCDA will allow consumption data for the twelve (12) month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be located in the state of Indiana and must be in the same climate zone as the development for which the estimate is being done. Please reference the Climate Zone Map in Appendix L. Once the project achieves 90% occupancy for ninety (90) consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

Section 3, Part 3.4 C 7

Added the following clarification:

Usage data must include information for 30% of the units of each unit type (flat or townhome) for each bedroom size. The usage data must contain a full twelve (12 months) of consumption. To be included in the estimate, a unit must have at least forty-four (44) weeks of continuous consumption data (i.e. the unit cannot have been vacant for more than 8 weeks of the year). The consumption data can be no more than sixty (60) days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

For new construction developments or renovated buildings with less than twelve (12) months of consumption data available, IHCDA will allow consumption data for the twelve (12) month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be located in the state of Indiana and must be in the same climate zone as the development for which the estimate is being done. Please reference the Climate Zone Map in Appendix L. Once the project achieves 90% occupancy for ninety (90) consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

Section 3, Part 3.5 C

Added the following paragraphs clarifying the 140% Rule:

In mixed-use projects, the Next Available Unit Rule may cause market rate units to be converted into tax credit units. The owner must continue renting the next available unit of comparable or smaller size to a tax credit eligible household until the Applicable Fraction is restored. Therefore, multiple market units may have to be converted into tax credit units until the Applicable Fraction is restored (remember the Applicable Fraction includes both the unit and floor space fraction).

Once the Applicable Fraction is restored (without counting the unit that invoked the Next Available Unit Rule), the over-income unit may be converted from tax credit to market rate and the rent may be raised as allowed by the language in the tenant's lease.

Added the following example of the 140% Rule:

Example 3:
A property contains 6 units. Units 1-3 are 1000ft2. Unit 1 is a tax credit unit and Units 2 and 3 are market rate. Units 4-6 are 800ft2. Units 4 and 5 are tax credit units and Unit 6 is currently vacant market rate unit. The assigned Applicable Fraction is 48%. The current floor space fraction is 2600 ft^2 /5400 ft^2 for a total of 48.15%. The current unit fraction is 3/6 for a total of 50%. The current fraction is 48.15% (the lower of the unit fraction vs. the floor space fraction) which is in compliance with the assigned fraction of 48%.

On September 1, the income of the tenants in Unit 1 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 29.63% (unit fraction is 2/6 or 33.33% and the floor space fraction is 1600/5400 or 29.63%).

On November 1, the management moves a qualified tax credit household into Unit 6 (the vacant market rate unit) converting the unit from market rate to tax credit. The unit fraction is now 3/6 (50%) but the floor space fraction is still below the limit at 2400/5400 (44.44%). The next available unit rule is still in effect, even though one market rate unit has already been converted to tax credit. Unit 1 (the over-income unit) will continue to be rent-restricted.

Now on January 1 of the following year, the market rate family in Unit 2 vacates the unit. Management moves in a qualified household. The unit fraction is now 4/6 (66.67%) and the floor space fraction is 3400/5400 (62.96%), for a total Applicable Fraction of 62.96%. Since the fraction has been restored, the over-income unit (Unit 1) can be converted to market rate when lease language allows and no longer has to be rent-restricted.

Added the following note on the 140% Rule:

-The fact that a household's income exceeds the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.

Section 3, Part 3.5 D

Added the following clarification on unit transfers:

When a transfer is permitted, the household's lease and Tenant Income Certification are moved over to the new unit. Management does not need to execute a new lease and a new TIC for a transfer, but must report the transfer event in IHCDA's online reporting system. The household's annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

Section 3, Part 3.6 A

Added the following note on military members:

Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit.

Section 3, Part 3.6 B

Added the following clarifications on the single parent student exemption:

Single parent means that only one of the parents lives in the unit. Therefore, the exemption is not met if both parents live in the unit but are not married. Consisting "entirely of single parents and their children" means that the only household members are single parents and their children. Therefore, if one member of the household is not a single parent or his/her child, then the exemption is not met. For example, if the household composition is a single mother, her two children, and a family friend, the exemption is not met because the family friend is not a single parent or his/her child. However, if the household was a single mother, her two children, a family friend who is also a single mother and her child, then the household would meet the exemption since all members are single parents and their children.

Added the following clarification on the TANF student exemption:

Food stamps, Social Security, and SSI are not considered exemptions under Title IV.

Added the following clarification on the job training program student exemption:

The mission of the Job Training Partnership Act, as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994 Sec. 2 is as follows:

It is the purpose of this Act to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependence, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the nation.

Added the following clarification on the mandatory student form:

This form must be included in all tax credit tenant files, and a separate form must be completed by each adult household member. This policy applies to all move-in and recertification files (including recertification files for 100% tax credit projects) with an effective date on or after 5/1/10. If an applicant or tenant indicates part-time status or claims an exemption on the certification form, IHCDA will expect to see third-party documentation verifying the information provided.

Added the following sections related to students:

5. Student Financial Assistance

Per Chapter 5 of the HUD Handbook 4350.3, student financial assistance must be counted as part of total household income for households receiving Section 8 rental assistance. However, financial assistance is not included as part of annual household income for tax credit households that do not receive Section 8 rental assistance. For Section 8 recipients, all forms of financial assistance in excess of the cost of tuition (not including cost of books, room and board, and other class fees) are included as income. This includes grants, scholarships, private assistance, educational entitlements, etc. but does not include loans.

There are two exceptions to this rule:
i. The student is over the age of 23 with dependent children; or
ii. The student is living with his or her parents who are receiving Section 8 assistance.

If the Section 8 recipient meets one of the previous exceptions, then financial assistance is not included as part of total household income.

6. Earned Income of Dependent Students

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of $480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income.

When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

7. Important Distinctions between Student and Income Eligibility Rules

Student status is treated differently than income eligibility in a number of important ways:

-While income eligibility is based on anticipated income for the next twelve (12) months, student status eligibility must consider not only if the applicant/tenant is or anticipates becoming a student within the next year, but also whether or not that applicant/tenant was a student parts of any five (5) months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and backward at student history.

-Income verifications are not required at recertification for 100% tax credit projects. However, those projects must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not the student status requirement for recertifications.

-A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household income qualifies, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into affect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

Section 3, Part 3.6F

Added the following clarification on live-in care attendants:

Additionally, the live-in aide cannot move a spouse, child, or other member into the unit, as doing so would indicate that the aide is living in the unit for reasons other than the care of the tenant.

Section 3, Part 3.6 G

Added the following clarification on non-transient occupancy:

In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all RHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> ***"Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."***

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time.

Section 3, Part 3.6

Added Part "L: Elderly Housing"

L. Elderly Housing

The Fair Housing Act and The Housing for Older Persons Act of 1995 (HOPA) exempt certain types of "housing for older persons" from the Act's prohibitions against discrimination because of familial status.

Therefore, tax credit projects may be designated as housing for the elderly (as defined in the project's Final Application and Declaration of Extended Rental Housing Commitment) in one of the following ways and not be in violation of Fair Housing:

1. ***100% of the units are restricted for households in which all members are age 62 or older or disabled; or***

2. ***At least 80% of the units are restricted for households in which at least one member is age 55 or older or disabled. IHCDA discourages the owner from adding additional age restrictions on the remaining household members, as long as one member is over 55 or disabled, as this could potentially violate familial status protections.***

   The remaining 20% of the units may also be restricted for households in which at least one member is 55 or older or disabled, may have a lower age restriction, or may be left open without any age restrictions. This determination is left up to the owner. The policy elected by the owner in regards to the remaining 20% of the units must be instituted equally for all applicants and must be placed in writing as part of the development's Tenant Selection Criteria Policy.

   HUD has noted that phrases such as "adult living," "adult community," or similar statements should not be used to market developments that fall under the 80% at 55 requirement. Rather, the property should be more specifically advertised as senior housing for households in which at least one household member is 55 years of age or older. Moreover, the development may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the elderly occupancy requirements on the 80% of the units.

   For more information on the 80% at 55 restriction, See "Implementation of the Housing for Older Persons Act of 1995; Final Rule" located in the Federal Register, Vol. 64 No. 63 from April 2, 1999. This document is included in Appendix K.

A tax credit project's elderly restrictions should be clearly defined in the project's Final Application and Declaration of Extended Rental Housing Commitment, and the owner and management should follow the restrictions defined therein.

Section 3, Part 3.7 A

Added the following clarification on Fair Housing:

Nondiscrimination means that owners cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owners may not engage in steering, segregation, false denial of availability, or discriminatory advertising.

Removed requirement for Affirmative Fair Housing Marketing Plan to be approved by HUD

Section 3, Part 3.7 C

Added the following paragraphs on General Public Use

Any residential unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not considered for use by the general public and is therefore not an eligible RHTC unit.

And

Violations of General Public Use and/or Fair Housing are reportable to the IRS via Form 8823. Depending on the nature of the violation, the noncompliance may be determined at the unit, building, or project level. Any unit found in violation of General Public Use and/or Fair Housing will fail to be considered a qualified low-income unit for purposes of determining the Applicable Fraction.

Section 3, Part 3.7

Added Part "E: Tenant Selection Criteria"

E. Tenant Selection Criteria

There are no federal or state tax credit regulations regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these criteria is entirely up to owner/management discretion, so long as the screening criteria are applied equally to all applicants.

Additionally, there are no current regulations governing citizenship requirements for tax credit tenants. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion. Owners should be aware that other housing programs (such as HUD programs) may have stricter citizenship requirements that must be followed if the project has additional funding along with tax credits.

Because many of these tenant selection criteria are left up to the discretion of the owner, it is important for each development to have an established Tenant Selection Criteria Policy in writing. This document should be made available to all applicants and tenants.

At a minimum, a good Tenant Selection Criteria Policy should include the following:

-Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);

-Tax credit program eligibility factors, including income limits and student status eligibility;

-Any minimum income requirements imposed by management;

-Any citizenship requirements imposed by management;

-Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application (e.g. do certain criminal charges or a certain credit score automatically disqualify the household?);

-Explanation of the application and waiting list process, including the process through which a tenant can appeal a rejection decision;

-Explanation of the transfer policies in effect;

-Breakdown of any special preferences set aside at the project (e.g. units reserved for special needs populations or an elderly restriction on the project); and

-List of any other relevant items used in considering the household's eligibility for occupancy

When creating a development's Tenant Selection Criteria Policy, the owner must be careful to follow all applicable tax credit eligibility regulations, Fair Housing regulations, and local occupancy standards.

Added Part 3.8 "Tax Credit Developments with HOME-Assisted Units"

Part 3.8 Tax Credits Developments with HOME-Assisted Units

A tax credit development may also receive HOME funds, resulting in a certain number of units reserved as both tax credit and HOME-assisted units. Units that are both RHTC and HOME-assisted must follow the compliance rules of both programs. As a general rule of thumb, when program compliance regulations differ, the owner should follow the stricter of the two.

The following is a sampling of common issues management may face when combining tax credits with HOME funding. This is not meant as an exhaustive listing. For more information on IHCDA's HOME compliance regulations, please refer to the Indiana HOME, CDBG, and Development Fund Rental Compliance Manual.

A. RHTC with HOME: Rent and Income Limits

1. HOME and RHTC rent and income limits may be different within the same county for the same year. IHCDA releases a separate set of limits for each program. For a unit under both programs, the stricter of the two sets of limits should be used (generally the HOME limits are lower and are thus the stricter).

2. Section 42 does not include rental assistance in the gross rent calculation. For HOME-assisted units, tenant-based rental assistance is included in the gross rent calculation, but project-based rental assistance is not included. For purposes of determining whether a HOME-

assisted unit is in compliance with the rent limits, the sum of the tenant-paid rent portion + tenant-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME rent limit.

B. RHTC with HOME: Certifications and Verifications

1. 100% tax credit projects do not have to perform annual income recertifications. However, those units that are also HOME-assisted must have a full annual recertification to comply with IHCDA's HOME program requirements.

2. The tax credit program allows household self-certification for assets if the total combined value of assets is less than or equal to $5000. HOME requires that all assets be third-party verified, so the "Under $5000 Assets Affidavit" cannot be used to satisfy the verification requirements on HOME-assisted units.

3. In the HOME program, verifications are valid for six (6) months. For Section 42, verifications are only valid for 120 days. Therefore, for units subject to both programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.

C. RHTC with HOME: Household Size and Eligibility

1. Section 42 includes unborn children when determining household size for purposes of determining the applicable income limits. However, HOME does not allow unborn children to be included as household members. If a household with an unborn child applies for a unit that is both tax credit and HOME-assisted, management must demonstrate that the household is income eligible under both programs.

2. The HOME program does not limit occupancy by full-time students. However, for HOME-assisted RHTC units, the tax credit full-time student rules apply.

D. RHTC with HOME: Fair Housing and Lead Based Paint Requirements

1. Upon project entry, households living in HOME-assisted units must be given the Fair Housing brochure entitled "You May Be a Victim Of" and the Lead Based Paint brochure entitled "Protect Your Family from Lead in Your Home." The household must sign documentation acknowledging the receipt of these brochures at time of move-in. Although this is not a requirement of Section 42, all HOME-assisted units in a tax credit development should have a signed copy of the acknowledgement located in the tenant file.

2. Any tax credit development with five (5) or more HOME units must follow Affirmative Fair Housing Marketing procedures. The owner must study the local market to determine the populations that are least likely to apply for housing, and then develop a plan to make sure that marketing efforts are reaching out to these groups. The owner should evaluate the development's Affirmative Marketing plan at least once every five (5) years and update the plan if necessary.

E. RHTC with HOME: IHCDA Audits

A development with tax credits and IHCDA HOME funds will be audited by IHCDA for each program. The tax credit file monitoring will occur once every three (3) years (see Part 5.6 for an explanation of the tax credit monitoring cycle).

Additionally, the HOME units will be audited according to the following schedule:
-If 1-4 HOME units in the development: once every three (3) years
-If 5-25 HOME units in the development: once every two (2) years
-If more than 25 HOME units in the development: annually

SECTION 4

Section 4, Part 4.1A

Added the following comments:

5. ***A separate "IRS Student Status Self-Certification" document completed by each adult member of the household each year, along with any additional student status verifications needed (e.g. verification of part-time status, verification of a student exemption, etc.);***

And

For tenants in project-based Section 8 units, a copy of the current HUD Form 50059 showing the amount of rental assistance.

And

NOTE: A recertification file for 100% tax credit projects will only include the following documentation: a new Tenant Income Certification Form, new student status certifications for each adult member of the household, and the new lease and all addenda. Verification of income and assets is not necessary at recertification for 100% tax credit projects.

Section 4, Part 4.1 B

The IHCDA TIC is now a mandatory form:

Beginning in 2011, IHCDA's sample TIC (Form #22 in Appendix D) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other TIC document, unless the TIC is submitted to IHCDA and specifically approved.

Section 4, Part 4.1 C

Added the following paragraphs on correcting tenant files:

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents should be signed with the current date, but noted as being "true and

effective" as of the actual certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification effective date continues to be the anniversary date of the move-in, not the date the documents were completed retroactively.

Example: Mrs. Smith is due for her annual recertification on December 20th. However, the property manager was distracted putting up holiday decorations and forgot to send out a recertification notice. Therefore, Mrs. Smith does not come in to the office to complete her paperwork until January 2nd. Mrs. Smith should sign all paperwork with the current date (January 2nd) but should make a note at the bottom of each form stating "information true and effective as of December 20th."

Section 4, Part 4.2

The IHCDA Tenant Eligibility Questionnaire is now a mandatory form:

Beginning in 2011, IHCDA's sample Tenant Eligibility Questionnaire form (Form # 23 in Appendix D) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other Questionnaire, unless the Questionnaire is submitted to IHCDA and specifically approved.

Section 4, Part 4.3 B 2

Added the following paragraphs on second-party verifications:

If second-party verification must be used, the owner is required to document the tenant file explaining the reason third-party verification could not be obtained and showing all efforts that were made to obtain third-party verification. Page 5-61 of the HUD Handbook 4350.3 states that the following documents should be placed in the tenant file:

- ***a) A written note to the file explaining why third-party verification is not possible; and/or***
- ***b) A copy of the date-stamped original request that was sent to the third-party; and/or***
- ***c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or***
- ***d) A written note to the file indicating that the request has been outstanding without a response from the third-party.***

AND

When using pay stubs in lieu of third-party employment verification, or bank statements in lieu of third-party asset verification, the owner must obtain the six (6) most recent consecutive stubs or statements.

Section 4, Part 4.3 B 3

Added the following paragraphs on tenant self-certification:

As a last resort, the owner may accept a tenant's signed affidavit if third-party and second-party verifications cannot be obtained. The owner should try to refrain from using self-affidavits except where absolutely necessary.

If a self-affidavit must be used to verify income or asset sources, the owner is required to document the tenant file by explaining the reason third-party or second-party verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the tenant file:

- ***a) A written note to the file explaining why third-party verification is not possible; and/or***
- ***b) A copy of the date-stamped original request that was sent to the third-party; and/or***
- ***c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or***
- ***d) A written note to the file indicating that the request has been outstanding without a response from the third-party; and/or***
- ***e) A written note to the file explaining why second-party verification is not possible.***

Section 4, Part 4.3 B4

Added the following paragraphs on HUD Form 50059 and EIV:

Because the HUD Form 50059 used for project-based Section 8 is not signed by a PHA representative, the Form 50059 cannot be used as income verification. However, the 50059 should be maintained in the file to verify the amount of rental assistance on the unit.

Furthermore, the tax credit program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. Therefore, the income of Section 8 recipients living in RHTC units must continue to be third-party verified. EIV documentation should be kept in a separate file from the tax credit verifications so that it is completely inaccessible to the tax credit monitor.

Section 4, Part 4.3 D

Added the following sections on verifying unemployment and employment income:

3. Unemployment Benefits

The owner must attempt to receive third-party verification of unemployment benefits. When anticipating income from unemployment, the owner must annualize the weekly benefit amount regardless of whether or not the benefit end date suggests that benefits won't last for the full year. The owner may not use the total benefit amount, the remaining benefit amount, or an average of the benefits received.

The only exception is if the tenant knows a date on which he or she will return to work or begin a new job. In this case, the owner would calculate unemployment benefits up until the hire date and then calculate employment income for the rest of the year. IHCDA will expect to see third-party verification of the unemployment benefits and a third-party verification (employment verification) showing the start date for the job, including all other information applicable to employment.

4. Employment Income

For purposes of verifying and calculating employment income, it is imperative to consider year-to-date earnings. IHCDA requires the owner to calculate employment income in one of the following manners:

-If third-party employment verification is received, calculate the total anticipated income for the year and compare to the anticipated income based off of the year-to-date (YTD) figure provided on the verification form (all employment verification forms must ask for YTD earnings). Use the higher of the two figures when calculating total household income.

-If the six (6) most recent paystubs are received, calculate the total anticipated income based off of the average of the six paystubs and compare to the total anticipated income based off of the year-to-date (YTD) figure found on the most recent paystub. Use the higher of the two figures when calculating household income.

IHCDA provides sample income calculation worksheets for the convenience of the owner/ management. Form #39 provides a calculation method for using third-party employment verifications and Form #40 provides a calculation method for using paystubs.

Section 4, Part 4.4 A

Added table "Whose Income and Assets are Counted:"

A. Whose Income and Assets are Counted?

Member	***Employment Income***	***Unearned/asset income***
Head of household	***Yes***	***Yes***
Spouse/ Co-head	***Yes***	***Yes***
Other adult	***Yes***	***Yes***
Foster adult*	***Yes***	***Yes***
Dependent Child Under 18	***No***	***Yes***
Full-time student over 18 **	***See Note Below***	***Yes***
Foster child under 18*	***No***	***Yes***
Non-members (live-in aides, guests, etc.)	***No***	***No***

****The earned and unearned income of foster adults and the unearned income of foster children is counted in total household income, but foster adults and foster children are not counted for the purposes of determining household size.***

If a full-time student over 18 is a dependent of the household, only a maximum of $480 of earned income is included in annual household income.

Section 4, Part 4.4 C 2

Added following note:

Note: The rule allowing self-certification of assets when total cash value of household assets is less than or equal to $5000 is a tax credit specific rule. Households that are under other programs (e.g. HOME) will need to third-party verify all assets in order to comply with those programs.

Section 4, Part 4.5 A

Added the following:

If a building is occupied at the time it is acquired and remains occupied throughout the period in which it is being rehabilitated, all existing households (those who occupied the building when it was acquired) must be documented as having been income-eligible ***no earlier than 120 days prior to the date of acquisition using the current income limits or*** no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition, ***providing a 240 day window during which the certification can be performed.*** The effective date of the Tenant Income Certification is the date of acquisition ***and the initial TIC is considered a move-in event, even though the tenant has already lived in the unit prior to the effective date.***

If an existing household is not certified within 120 days before or after the date of acquisition, the effective date of the TIC will be the actual date the household is income certified and all documentation is completed. The initial TIC will be considered a move-in event, even though the tenant has already lived in the unit prior to the effective date.

AND

The test will be necessary if acquisition and rehabilitation are not completed within the same year, because the credit period cannot begin until the year in which rehabilitation is completed. If acquisition and rehabilitation are completed within the same year, the "test" will not need to be completed.

Section 4, Part 4.5 C &D

Added the following sections:

C. Rehabilitation of an Existing Tax Credit Development

It is possible for the owner of an existing tax credit development to be issued another set of credits for rehabilitation after the initial fifteen (15) year compliance period has ended. This is often referred to as a "subsequent allocation." Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the

recertification cycle does not change. Any households that were over the 140% limit at their last recertification are treated as qualified units but continue to invoke the Next Available Unit Rule.

Additionally, vacant units previously occupied by income-qualified households continue to qualify as RHTC units as long as the owner properly follows the Vacant Unit Rule.

D. Acquisition and Rehabilitation of an Existing Tax Credit Development

It is possible for an existing tax credit development to be sold to a new owner and then issued a new allocation of acquisition/rehabilitation credits. From the time the project is sold until the time a new declaration is recorded, the new owner is subject to the original extended use agreement between IHCDA and the former owner.

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. However, when the new credits are allocated and the credit period begins, the new owner must conduct the "test" as described in Part 4.5 A above, and any households exceeding the 140% limit are subject to the Next Available Unit Rule.

Once the new credit period begins, any vacant units that were previously occupied by income-qualified households cease to be treated as qualified RHTC units. Instead these units are treated as empty (never-occupied) units until a qualified household is moved-in.

Section 4, Part 4.5 F

Added the following clarification:

In developments that have an Applicable Fraction of less than 100%, a household that is designated as market rate at the time of actual move-in to the unit may later be re-designated as a RHTC household. When this happens, the household must be certified as a RHTC household at the time of re-designation. ***In this scenario, the household would be treated as a new move-in event. The move-in date and effective date of the initial TIC would both be the date the household was designated as a tax credit eligible household, not the date the household moved in as market rate.***

Section 4, Part 4.6 B 1

Added the following clarifications:

2. The new household member's income must be included as part of the household's certified income. For 100% RHTC projects, the new tenant's income is added to the original household income at move-in. For mixed-use projects (projects with both RHTC and market rate units), the new tenant's income is added to the household income as of the most recent annual recertification. ***A new household TIC does not have to be created, but management should notate the file to show that a new total household income has been computed. A management clarification form will suffice. Additionally, a household update event must be input into the online reporting system detailing the new total household member count***

AND

NOTE: Only the income and eligibility of the new resident is required to be verified when adding a member to a household before the Annual Tenant Income Certification is due (i.e. the existing members do not need to be recertified if it is not time for their annual recertification). Owners must verify the new resident's income ***and complete an independent TIC for that resident. This income must then be added to*** the existing household's certified income to determine if the household's income has exceeded the 140% income limit. The household's annual recertification will remain on the anniversary of the original move-in date, not the date that the new member was added.

The new resident should sign an independent Tenant Income Certification form and complete all verification documents. ***The independent TIC should not include information about the other household members or their income. The TIC will be noted as a "household update" rather than a move-in or recertification. The importance of an independent TIC will be discussed in the section below. The new total household income (combined from the new member and existing members) will not show on the independent TIC, but can simply be listed on a management clarification sheet to prove whether or not the household invokes the Next Available Unit Rule.***

Section 4, Part 4.7

Added Example 2:

Example 2: XYZ Apartments is 100% tax credit with RD funding. For tax credit compliance purposes, XYZ Apartments may institute the 100% Recertification Exemption policy. However, management will need to continue following all applicable RD regulations in order to comply with RD funding.

Changed language regarding bond projects to read:

IHCDA may allow the recertification exemption for buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). The owner must demonstrate to IHCDA that the local bond issuer has granted the project permission to stop performing annual income recertifications.

Section 4, Part 4.8 A

Added the following paragraphs:

A signed lease must be in effect for each year that a household resides in a unit. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit.

A unit must be leased directly to the household, not to an organization that is providing services to the household. The household may have a cosigner if necessary, but the cosigner should sign a self-affidavit stating that he or she will not reside in the unit.

Section 4, Part 4.8 C

Added the following paragraphs:

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> ***"Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."***

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time.

Section 4, Part 4.8 E

Added the following paragraph:

If after occupying a unit, an eligible household cannot pay the rent or otherwise commits material violation of the lease, the owner has the same rights in dealing with the income-eligible tenant as with any other tenant, including, if necessary, eviction.

Added the following note:

Exceeding the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.

SECTION 5

Section 5, Part 5.1

Added the following:

IHCDA will annually update its contact list based on the information provided in the development's Annual Owner Certification of Compliance. As part of the Owner Certification documentation, the owner is able to elect one designated primary owner contact and one designated primary management contact per development.

Section 5, Part 5.2

Added the following:

An amended Compliance Manual is released annually and the newest edition overrides all previous editions. Except where otherwise noted, all amendments to the Compliance Manual apply to all developments, regardless of year of allocation.

Section 5, Part 5.6 B

Added the following note:

NOTE: The desktop notification/file request letter will include a checklist of the items that must be included in each tenant file submitted. When reviewing copies of the files, IHCDA will expect to see all of the applicable documents listed on the checklist, in the approximate order that they are listed (leasing information, tenant information, income verifications, asset verifications, other clarifications). Monitors will not review files that are submitted in a disorderly or incomplete fashion.

Section 5, Part 5.9 B

Added the following items:

Sale of a Building(s) or an interest therein

After the issuance of Form 8609, upon the sale, transfer or disposition of a Qualified Low-Income Building or an interest therein, the transferee shall immediately submit ***a "Property Ownership Change Form" to IHCDA, along with*** the following supplemental documentation:

1. ***A copy of completed Form 8693;***
2. A copy of all sale documents;
3. The newly amended and stated partnership agreement;
4. ***Proof that the new owner has attended a tax credit compliance training within the past three (3) years;***
5. ***An interim Owner Certification completed by the new owner for the current year;***
6. ***A check for the sum equal to the compliance monitoring fees for one year; and***
7. Any other additional information the Authority may request.

Section 5, Part 5.11 A

Added Example 2 and Example 4:

Example 2:
Noncompliance discovered and corrected during a later year of the Qualifying Period
A development is issued an 8823 in Year 13. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 14. Later in Year 14, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 13 and 14 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 15 at the earliest.

Example 4:
Previously reported noncompliance continues into the Qualifying Period
A development is issued an 8823 in Year 12. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 13. Later in Year 13, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 12 and 13 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 14 at the earliest.

Section 5, Part 5.11 B

Removed requirement that owner annually submit an Affirmative Marketing Plan

Section 5, Part 5.12

Added Part 5.12 and made the previous part 5.12 become 5.13:

Part 5.12 Release from Extended Use Agreement

A. Special Circumstances for Release

IHCDA will consider releasing all or a portion of the units under the Extended Use Declaration for projects that have completed their initial fifteen (15) year compliance period if at least one of the following criteria is met to the satisfaction of the Authority:

1. *The economic viability of the property is poor and cannot be maintained throughout the Extended Use Period through its current rental structure.*

2. *Current rents are approximately the same as Fair Market Rents for units of similar size and structure and will remain similar for the foreseeable future.*

3. *There is a low measurable impact to the affordable housing market in the area.*

Approval for the release of an Extended Use Declaration is at the sole discretion of IHCDA and the Authority may require the submission of additional information to support any request for release.

For more information, see the Qualified Contract Provisions in Appendix H.

B. *Protection of Tenant Rights*

The Code provides a specific "Protection of Tenant Rights" for those tenants living in projects that are released from their Extended Use Agreement. Two requirements must be met when an Extended Use Agreement is terminated.

1. The owner may not evict or terminate the tenancy (other than for "good-cause") of any existing tenant of a former tax credit unit before the close of the three (3) year period following the termination of the Extended Use Agreement; and

2. The owner may not increase the gross rent of any unit occupied by a formerly qualified tax credit household (except as permitted under Section 42) before the close of the three (3) year period following the termination of the Extended Use Agreement. Therefore, all existing tax credit households remain rent restricted for three years.

All existing tax credit households are protected by items #1 and #2 above for the three (3) year period following the termination of the Extended Use Agreement. However, new households moving into the project do not have to be rent or income restricted effective the date the Extended Use Agreement is terminated.

SECTION 7 – GLOSSARY

Added the following terms:

- 240-day window
- 8609
- 8823
- 8823 Guide
- Allowable Fee
- Available Unit
- Date of Acquisition
- Floor Space Fraction
- Full-time Student
- Full-time Student Household
- Good-cause Eviction
- Gross Rent Floor
- Gross Rent Floor Election Date
- HERA
- Initial Tenant File
- In-place Household
- Multiple-building Project
- Non-optional Fee
- Optional Fee
- Passbook Rate
- Reasonable Accommodation
- Reasonable Modification
- Recapture
- Second-party Verification
- Self-certification
- Subsequent Credit Allocation
- Third-party Verification
- Unit Fraction